

TENNESSEE REGULATORY AUTHORITY

REC'D TN
REGULATORY AUTH.

'01 MAR 29 PM 3 34


OFFICE OF ~~Don Sundquist~~
EXECUTIVE SECRETARY ~~Gary~~ *Arnold*

H. Lynn Greer, Jr.
Director



March 29, 2001

TO: David Waddell

FROM: Lynn Greer 

RE: Docket No. 00-00702 - Rulemaking Proceeding - Regulations for
the Provisioning of Tariff Term Plans and Special Contracts

On advice of legal counsel, I am submitting to you a copy of amendments that I intend to propose at the conference on Tuesday, April 3rd. Mr. Collier and I both felt like it would be wise to circulate these in advance.

Enclosure

c: Sara Kyle
Melvin Malone
Richard Collier

Notice
of
Rulemaking

REC'D TN
REGULATORY AUTH.

Tennessee Regulatory Authority

01 MAR 29 PM 3 34

OFFICE OF THE
EXECUTIVE SECRETARY
Substance of Proposed Rules

New Rules with Amendments by Director Greer

1220-4-2-.59 Regulations For The Provisioning Of Tariff Term Plans And Special Contracts

(1) Definitions.

- (a) Affiliate – a person or entity who possesses, either directly or indirectly and either alone or in conjunction with another person or entity, the authority to direct or cause the direction of the management or policies of another entity. Beneficial ownership of more than ten percent (10%) of voting securities or partnership interest in another entity shall be deemed to confer authority for the purposes of these rules.
- (b) Average Annual Revenues – Aggregate revenues billable under a special contract or tariff term plan divided by the term length in years.
- (c) Price Regulation Telecommunications Carrier – For purposes of this rule, an incumbent local exchange carrier as defined in Tenn. Code Ann. § 65-4-101(d) that has implemented a price regulation plan pursuant to Tenn. Code Ann. § 65-5-209.(d) Revenue Price-out – Quantity for each rate or service element multiplied by the individual unit rate for that rate or service element.
- (e) Shortfall Provision – A plan or contract clause requiring the customer to pay the difference between the actual billed revenue and the revenue commitment for a discrete period of time agreed upon by the price regulation telecommunications carrier and the customer.
- (f) Special Contract – A service arrangement that is entered into between the price regulation telecommunications carrier and certain customers prescribing and providing services, rates, terms, practices, or conditions that are not covered by or permitted in the tariffs or price lists filed by such price regulation telecommunications carrier. Special contracts include without limitation all special contract arrangements, contract service arrangements, individual case basis contracts, etc.

- (g) Tariff Term Plan – A service arrangement, including special promotions, offered to customers under the price regulation telecommunications carrier's general tariffs for a service term of three (3) months or longer.
 - (h) Termination Charges – All amounts, including but not limited to amounts resulting from the application of shortfall provisions, charged to the customer by the price regulation telecommunications carrier as a result of the cancellation of service prior to the time that the customer's obligations under a tariff term plan or special contract would have otherwise been satisfied.
- (2) Application. All price regulation telecommunications carriers as defined herein are subject to this rule.
- (3) Availability. All rates, terms, and conditions of service provided to any customer under a tariff term plan or special contract shall be offered to any other customer for service of a like kind under substantially like circumstances and conditions.
- (4) Termination Charges.
 - (a) For all tariff term plans entered into after the effective date of this rule by price regulation telecommunications carriers, termination charges shall not exceed repayment of discounts received during the previous twelve (12) months of service, except as specified in subparagraphs (c) and (d) of this paragraph.
 - (b) For any special contracts entered into after the effective date of this rule by price regulation telecommunications carriers, termination charges shall not exceed the total of the repayment of discounts received during the previous twelve (12) months of service, the repayment of the prorated amount of any waived or discounted non-recurring charges, and the repayment of the prorated amount of any documented contract preparation, implementation and tracking, or similar charges, except as specified in subparagraphs (c) and (d) of this paragraph.
 - (c) Tariff term plans and special contracts shall not permit termination charges to exceed six percent (6%) of the total tariff term plan or special contract amount. For service terms longer than four (4) years, tariff term plans and special contracts shall not permit total termination charges to exceed twenty-four percent (24%) of the average annual revenues of the tariff term plan or special contract.

- (d) Termination charges for an individual service may exceed the levels specified in subparagraphs (a), (b) and (c) of this paragraph only upon demonstration to the Authority that the unrecovered portion, if any, of the customer specific costs incurred to provide such service exceeds the levels in subparagraphs (a), (b) and (c) of this paragraph in the event of early termination. Price regulation telecommunications carriers shall petition for Authority approval of any such charges prior to the effective date of the tariff term plan or special contract.
- (5) Use of Special Contracts and Tariff Term Plans. A price regulation telecommunications carrier shall not use special contracts in lieu of interconnection agreements and or to prescribe or provide for services, rates, terms, practices, or conditions of interconnection or any other carrier-to-carrier service arrangement.
- (6) Filing requirements.
 - (a) Each price regulation telecommunications carrier shall file with the Authority for review and approval a final, signed copy of all special contracts inclusive of attachments and addendums at least ten (10) days before the effective date of such contracts. Any reference to the customer's name may be redacted unless otherwise ordered by the Authority. Upon application and for good cause shown, the Authority may waive the ten-day time period or any portion thereof. All special contracts shall be accompanied by a tariff which sets forth a summary of each special contract entered into between the price regulation telecommunications carrier and the customer. At a minimum, such tariff summaries of special contracts shall include:
 - 1. Customer name and address, which may be filed under proprietary seal unless otherwise ordered by the Authority;
 - 2. A full and complete description of the services provided or available to the customer;
 - 3. All individual rates for services provided or otherwise available;
 - 4. The term of service(s);
 - 5. Volume or quantity of services;
 - 6. A detailed description of all applicable termination charges. Any request made pursuant to Rule 1220-4-2-.59(4)(d)

shall include detailed calculations and supporting documentation;

7. Term requirements that the customer must fulfill to qualify for the special contract;
8. Volume or quantity requirements that the customer must satisfy to qualify for the special contract; and
9. Any and all other particular requirements or conditions that the customer must meet to qualify for the special contract.

(b) Each price regulation telecommunications carrier shall file with the Authority for review and approval all tariff term plans at least thirty (30) days before the effective date of such plans. Except, upon application and for good cause shown, the Authority may waive the thirty-day time period or any portion thereof. Each tariff term plan filed by a price regulation telecommunications carrier with the Authority shall include tariff language that sets forth at a minimum:

1. A full and complete description of the services available to customers;
2. All individual rates for services available;
3. A detailed description of all applicable termination charges. Any request made pursuant to Rule 1220-4-2-.59(4)(d) shall include detailed calculations and supporting documentation;
4. Term requirements that a customer must fulfill to qualify for the tariff term plan;
5. Volume or quantity requirements that a customer must satisfy to qualify for the tariff term plan; and
6. Any and all other particular requirements or conditions that a customer must meet to qualify for the tariff term plan.

(7) Approval of Special Contracts and Tariff Term Plans.

- (a) Special contracts with non-affiliate customers shall be deemed approved ten (10) days after the date of the proper filing with the Executive Secretary of the special contract and other information required under Rule 1220-4-2-.59(6)(a) unless otherwise notified by the Authority.

- (b) Tariff term plans shall be deemed approved thirty (30) days after the filing date of the tariff term plan unless otherwise notified by the Authority.
 - (c) Notwithstanding subparagraph (a) above, special contracts with affiliate customers shall be considered by the Authority at a regularly scheduled Authority Conference, and shall not be effective until explicitly approved by the Authority.
- (8) Powers of the Executive Secretary. If any issue arises as to any special contract or tariff term plan prior to the approval of the special contract or tariff term plan, the Executive Secretary shall have the power to issue a notice to the price regulation telecommunications carrier that filed the special contract or tariff term plan suspending the effective date of the special contract or tariff term plan to allow the Authority sufficient time to consider the special contract or tariff term plan at the next regularly scheduled Authority Conference.
- (9) Amended tariffs. All price regulation telecommunications carriers as defined herein shall file amended tariffs consistent with the provisions of this rule. Such tariffs shall be filed with the Authority to become effective upon the effective date of this rule.
- (10) Powers of the Authority. Nothing in these rules shall limit or otherwise alter the Authority's power to review any special contracts or tariff term plans, either upon complaint or on its own motion, and to take appropriate action as a result of such review. For the purposes of review, the Authority may require carriers to provide, among other information:
 - (a) Cost justification demonstrating adherence to the price floor as required under Tenn. Code Ann. § 65-5-208(c) and
 - (b) Revenue price-outs for existing tariff rates, if applicable, and proposed contract rates.

Authority: T.C.A. §§ 65-1-209 and 65-2-102.

Repeals

Subparagraph (g) of Paragraph (2) of Rule 1220-4-2-.55, Regulatory Reform is repealed.

Amendments

Rule 1220-4-8-.07(3) Tariff and Pricing Requirements for Competing Local Telecommunications Service Providers Local Service is deleted in its entirety and amended such that the amended rule reads:

(3) Special Contract Provisions

- (a) Special contracts with end users which are not unduly discriminatory shall be permitted. However, the Authority shall be notified of the existence of the contract upon execution, and shall be provided with a written summary of the contract provisions including a description of the services provided. The Authority shall make a copy of the summary available for inspection by any interested party. A copy of the contract shall be made available for Authority review upon request.
- (b) Any special pricing package, contract, or discount shall be made available to any similarly situated customer satisfying the required terms and conditions of the special agreement upon request.

Authority: T.C.A. §§ 65-2-102, 65-5-201, 65-5-202, 65-5-203, and 65-5-204.

Rule 1220-4-1-.07, Special Contracts, is amended by adding the following language:

Additional regulations regarding special contracts of certain telecommunications carriers operating pursuant to Tenn. Code Ann. § 65-5-209 are specified in Rule 1220-4-2-.59.

Authority: T.C.A. §65-2-102.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Regulatory Authority.

K. David Waddell
Executive Secretary

Subscribed and sworn to before me this the _____ day of _____, 2000.

Notary Public

My commission expires on the _____ day of _____, _____.

The notice of rulemaking set out herein was properly filed in the Department of State on the _____ day of _____, 2000.

Riley C. Darnell
Secretary of State

By: _____

Notice REC'D TN
of REGULATORY AUTH.
Rulemaking

'01 MAR 29 PM 3 34

Tennessee Regulatory Authority
OFFICE OF THE
EXECUTIVE SECRETARY

Substance of Proposed Rules

New Rules with Amendments by Director Greer

1220-4-2-.59 Regulations For The Provisioning Of Tariff Term Plans And Special Contracts

(1) Definitions.

- (a) Affiliate – a person or entity who possesses, either directly or indirectly and either alone or in conjunction with another person or entity, the authority to direct or cause the direction of the management or policies of another entity. Beneficial ownership of more than ten percent (10%) of voting securities or partnership interest in another entity shall be deemed to confer authority for the purposes of these rules.
- (ba) Average Annual Revenues – Aggregate revenues billable under a special contract or tariff term plan divided by the term length in years.
- (c) Price Regulation Telecommunications Carrier – For purposes of this rule, an incumbent local exchange carrier as defined in Tenn. Code Ann. § 65-4-101(d) that has implemented a price regulation plan pursuant to Tenn. Code Ann. § 65-5-209.
- (db) Revenue Price-out – Quantity for each rate or service element multiplied by the individual unit rate for that rate or service element.
- (ee) Shortfall Provision – A plan or contract clause requiring the customer to pay the difference between the actual billed revenue and the revenue commitment for a discrete period of time agreed upon by the price regulation telecommunications carrier and the customer.
- (fd) Special Contract – A service arrangement that is entered into between the price regulation telecommunications carrier and certain customers prescribing and providing services, rates, terms, practices, or conditions that are not covered by or permitted in the tariffs or price lists filed by such price regulation telecommunications carrier. Special contracts include without limitation all special contract arrangements, contract service arrangements, individual case basis contracts, etc.

- (ge) Tariff Term Plan – A service arrangement, including special promotions, offered to customers under the price regulation telecommunications carrier's general tariffs for a service term of three (3) months or longer.
- ~~(f) Telecommunications Carrier – For purposes of this rule, all facilities-based telecommunications carriers, excluding incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee unless such incumbent local exchange carrier voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange carrier applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.~~
- (hg) Termination Charges – All amounts, including but not limited to amounts resulting from the application of shortfall provisions, charged to the customer by the price regulation telecommunications carrier as a result of the cancellation of service prior to the time that the customer's obligations under a tariff term plan or special contract would have otherwise been satisfied.
- (2) Application. All price regulation telecommunications carriers as defined herein are subject to this rule. ~~For purposes of this rule, resellers of telecommunications services are not classified as price regulation facilities-based telecommunications carriers.~~
- (3) Availability. All rates, terms, and conditions of service provided to any customer under a tariff term plan or special contract shall be offered to any other customer for service of a like kind under substantially like circumstances and conditions.
- (4) Termination Charges.
 - (a) For all tariff term plans entered into after the effective date of this rule by price regulation telecommunications carriers, termination charges shall not exceed repayment of discounts received during the previous twelve (12) months of service, except as specified in ~~subparts~~ subparagraphs (c) and (d) of this paragraph.
 - (b) For any special contracts entered into after the effective date of this rule by price regulation telecommunications carriers, termination charges shall not exceed the total of the repayment of discounts received during the previous twelve (12) months of service, the repayment of the prorated amount of any waived or discounted non-recurring charges, and the repayment of the prorated amount of any documented contract

preparation, implementation and tracking, or similar charges, except as specified in ~~subparts-subparagraphs~~ (c) and (d) of this paragraph.

- (c) Tariff term plans and special contracts shall not permit termination charges to exceed six percent (6%) of the total tariff term plan or special contract amount. For service terms longer than four (4) years, tariff term plans and special contracts shall not permit total termination charges to exceed twenty-four percent (24%) of the average annual revenues of the tariff term plan or special contract.
- (d) Termination charges for an individual service may exceed the levels specified in ~~subparts-subparagraphs~~ (a), (b) and (c) of this paragraph only upon demonstration to the Authority that the unrecovered portion, if any, of the customer specific costs incurred to provide such service exceeds the levels in ~~subparts-subparagraphs~~ (a), (b) and (c) of this paragraph in the event of early termination. Price regulation telecommunications carriers shall petition for Authority approval of any such charges prior to the effective date of the tariff term plan or special contract. Telecommunication carriers shall request the exception provided for herein when applying for approval.

(5) Use of Special Contracts and Tariff Term Plans. A price regulation telecommunications carrier shall not use special contracts in lieu of interconnection agreements and or to prescribe or provide for services, rates, terms, practices, or conditions of interconnection or any other carrier-to-carrier service arrangement.

(65) Filing requirements.

- (a) Each price regulation telecommunications carrier shall file with the Authority for review and approval a final, signed copy of all special contracts inclusive of attachments and addendums at least ten (10) thirty (30) days before the effective date of such contracts. Any reference to the customer's name may be redacted unless otherwise ordered by the Authority. Except, —Upon application and for good cause shown, the Authority may waive the thirty-ten-day time period or any portion thereof. All special contracts shall be accompanied by the following: a tariff which sets forth a summary of each special contract entered into between the price regulation telecommunications carrier and the customer. At a minimum, such tariff summaries of special contracts shall include:

- 1. Customer name and address, which may be filed under proprietary seal unless otherwise ordered by the Authority;

2. A full and complete description of the services provided or available to the customer;
 3. All individual rates for services provided or otherwise available;
 4. The term of service(s);
 5. Volume or quantity of services;
 6. A detailed description of all applicable termination charges. Any request made pursuant to Rule 1220-4-2-.59(4)(d) shall include detailed calculations and supporting documentation;
 7. Term requirements that the customer must fulfill to qualify for the special contract;
 8. Volume or quantity requirements that the customer must satisfy to qualify for the special contract; and
 9. Any and all other particular requirements or conditions that the customer must meet to qualify for the special contract.
- ~~1. Special contracts submitted by telecommunications carriers operating pursuant to Tenn. Code Ann. § 65-5-209 shall be accompanied by:

 - ~~(i) Cost justification demonstrating adherence to the price floor as required under Tenn. Code Ann. § 65-5-208(c) and~~
 - ~~(ii) Revenue price-outs for existing tariff rates, if applicable, and proposed contract rates.~~~~
 - ~~2. A tariff which sets forth a summary of each special contract entered into between the telecommunications carrier and the customer. At a minimum, such tariff summaries of special contracts shall include:

 - ~~(i) Customer name and address;~~
 - ~~(ii) A full and complete description of the services provided or available to the customer;~~
 - ~~(iii) All individual rates for services provided or otherwise available;~~~~

- ~~(iv) — The term of service(s);~~
- ~~(v) — Volume or quantity of services;~~
- ~~(vi) — A detailed description of all applicable termination charges. Any request made pursuant to Rule 1220-4-2-.59(4)(d) shall include detailed calculations and supporting documentation;~~
- ~~(vii) — Term requirements that the customer must fulfill to qualify for the special contract;~~
- ~~(viii) — Volume or quantity requirements that the customer must satisfy to qualify for the special contract; and~~
- ~~(ix) — Any and all other particular requirements or conditions that the customer must meet to qualify for the special contract.~~

(b) Each price regulation telecommunications carrier shall file with the Authority for review and approval all tariff term plans at least thirty (30) days before the effective date of such plans. Except, upon application and for good cause shown, the Authority may waive the thirty-day time period or any portion thereof. Each tariff term plan filed by a price regulation telecommunications carriers with the Authority shall include tariff language that sets forth at a minimum:

1. A full and complete description of the services available to customers;
2. All individual rates for services available;
3. A detailed description of all applicable termination charges. Any request made pursuant to Rule 1220-4-2-.59(4)(d) shall include detailed calculations and supporting documentation;
4. Term requirements that a customer must fulfill to qualify for the tariff term plan;
5. Volume or quantity requirements that a customer must satisfy to qualify for the tariff term plan; and
6. Any and all other particular requirements or conditions that a customer must meet to qualify for the tariff term plan.

(7) Approval of Special Contracts and Tariff Term Plans.

- (a) Special contracts with non-affiliate customers shall be deemed approved ten (10) days after the ~~filing~~ date of the proper filing with the Executive Secretary of the special contract and other information required under Rule 1220-4-2-.59(6)(a) unless otherwise notified by the Authority.
 - (b) Tariff term plans shall be deemed approved thirty (30) days after the filing date of the tariff term plan unless otherwise notified by the Authority.
 - (c) Notwithstanding ~~subsection-subparagraph~~ (a) above, special contracts with affiliate customers ~~must~~ shall be ~~explicitly approved~~ considered by the Authority at ~~-aa~~ regularly scheduled Authority Conference, and shall not be effective until explicitly approved by the Authority.
- (8) Powers of the Executive Secretary. If any issue arises as to any special contract or tariff term plan prior to the approval of the special contract or tariff term plan, the Executive Secretary shall have the power to issue a ~~letter~~ notice to the price regulation telecommunications carrier that filed the special contract or tariff term plan suspending the effective date of the special contract or tariff term plan to allow the Authority sufficient time to ~~address~~ consider the special contract or tariff term plan at ~~the~~ next regularly scheduled Authority Conference.
- (96) Amended tariffs. All price regulation telecommunications carriers as defined herein shall file amended tariffs consistent with the provisions of this rule. Such tariffs shall be filed with the Authority to become effective upon the effective date of this rule.
- (10) Powers of the Authority. Nothing in these rules shall limit or otherwise alter the Authority's power to review any special contracts or tariff term plans, either upon ~~request~~ complaint or on its own motion, and to take appropriate action as a result of such review. For the purposes of review, the Authority may require carriers to provide, among other information:
- (a) Cost justification demonstrating adherence to the price floor as required under Tenn. Code ~~a~~Ann. § 65-5-208(c) and
 - (b) Revenue price-outs for existing tariff rates, if applicable, and proposed contract rates.

Authority: T.-C.-A. §§ 65-1-209 and 65-2-102.

Repeals

Subparagraph (g) of Paragraph (2) of Rule 1220-4-2-.55, Regulatory Reform is repealed.

Amendments

Paragraph (3) of Rule 1220-4-8-.07(3); Tariff and Pricing Requirements for Competing Local Telecommunications Service Providers—Local Service is deleted in its entirety and amended such that the amended rule reads:~~repealed.~~

(3) Special Contract Provisions

- (a) Special contracts with end users which are not unduly discriminatory shall be permitted. However, the Authority shall be notified of the existence of the contract upon execution, and shall be provided with a written summary of the contract provisions including a description of the services provided. The Authority shall make a copy of the summary available for inspection by any interested party. A copy of the contract shall be made available for Authority review upon request.
- (b) Any special pricing package, contract, or discount shall be made available to any similarly situated customer satisfying the required terms and conditions of the special agreement upon request.

Authority: T.C.A. §§ 65-2-102, 65-5-201, 65-5-202, 65-5-203, and 65-5-204.

Amendments

Subparagraph (e) of Paragraph (2) of Rule 1220-4-2-.55, Regulatory Reform, is amended by adding the following new part:

- 4. ~~Special contracts and tariffs establishing or revising termination charges must be filed with the Authority for review and approval at least thirty (30) days prior to the effective date of such special contracts and/or tariff term arrangements. Except, upon application and for good cause shown, the Authority may waive the thirty-day time period or any portion thereof.~~

Authority: T. C. A. §65-2-102.

Subparagraph (e) of Paragraph (1) of Rule 1220-4-8-.07, Tariff and Pricing Requirements for Competing Local Telecommunications Service Providers—Local Service, is amended by

deleting the paragraph in its entirety and substituting instead the following new language so that, as amended, the subparagraph shall read:

~~Tariffs and price lists for new services shall be effective on the tariff or price filing date as defined in this Rule Chapter. Special contracts and tariffs establishing or revising termination charges must be filed with the Authority for review and approval with at least thirty (30) days notice prior to the effective date of such special contracts and/or tariff term arrangements, unless upon application and for good cause shown the Authority may waive the thirty day time period or any portion thereof.~~

Authority: T. C. A. §65-2-102.

Rule 1220-4-1-.07, Special Contracts, is amended by adding the following language:

Additional regulations regarding special contracts of certain price regulation telecommunications carriers operating pursuant to Tenn. Code Ann. § 65-5-209 are specified in Rule 1220-4-2-.59.

Authority: T.-C.-A. §65-2-102.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Regulatory Authority.

K. David Waddell
Executive Secretary

Subscribed and sworn to before me this the _____ day of _____, 2000.

Notary Public

My commission expires on the _____ day of _____, _____.

The notice of rulemaking set out herein was properly filed in the Department of State on the _____ day of _____, 2000.

Riley C. Darnell
Secretary of State

By: _____